S.B.CIVIL WRIT PETITION NO.2491/2006
Kamla Vs. The ACJ (SD) No.2 Jodhpur & others

Date of order : 12th May 2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.K.R.Saharan for the petitioner
Mr.Bharat Devasi for the respondent No.2-caveator

This writ petition has been submitted against the order dated 04.05.2006 passed by the Addl. Civil Judge (Sr.Division) No.2, Jodhpur in Election Petition No.11A/2005, closing down the cross-examination of the witness of the election petitioner (respondent No.2).

The present petitioner is facing the election petition submitted by respondent No.2 in relation to Panchayat Elections held on 04.02.2005. It appears that in view of the delay having already been caused in the trial of the election petition; several adjournments having been taken; several frivolous applications having been filed; and yet the petitioner having not proceeded with the cross-examination of the witnesses who had repeatedly attended the proceedings, the learned trial court on 04.05.2006 did not feel inclined to grant further adjournment at the request of counsel for the petitioner and, therefore, closed the right of cross-examination.

Learned counsel Mr.Bharat Devasi has put in appearance in caveat for the contesting respondent No.2 . Having regard to the circumstances of the case and other respondents being proforma party for the subject matter of this petition, their service is dispensed with.

Heard learned counsel.

Mr.Bharat Devasi learned counsel appearing for the election petitioner (respondent No.2) submits that though the conduct of the petitioner has not been fair and unnecessarily the trial has been delayed, however, having regard to the circumstances of the case and in the interest of justice, the election petitioner does not wish to contest the prayer of the petitioner to cross-examine the witnesses in case the petitioner makes payment of reasonable costs and proceeds with the cross-examination on the next date to be fixed by the trial court.

Having heard learned counsel for the parties and having perused the order-sheets in this case, this Court finds that the petitioner had attempted to elongate the trial of the election petition on the earlier occasion and, therefore, the learned trial court could

not be said to be unjustified in closing the right of cross-examination on 04.05.2006. However, in the interest of justice and as conceded by the counsel for the respondent No.2, it is considered appropriate to grant an opportunity to the petitioner to cross-examine the witnesses named in the order dated 04.05.2006, Smt.Sita, Manak Singh, Natha Ram and Trilok Ram, positively on the next date of hearing on the condition of petitioner making payment of costs of Rs.5000/-(Rupees Five Thousand) to the respondent No.2 on or before the next date of hearing. Having regard to the circumstances of the case, it is further considered appropriate that another condition should be imposed on the petitioner to deposit an amount of Rs.3000/- (Rupees Three Thousand) that shall remain in deposit with the trial court and the said amount shall be available with the trial court to be awarded to the witnesses or to the election petitioner in case any further delay is attempted to be caused by the petitioner. Ordered accordingly.

The writ petition stands allowed to the extent and in the terms indicated above.

(DINESH MAHESHWARI),J.

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